

AGREEMENT
BETWEEN
THE CITY OF FRISCO, TEXAS (CITY)
AND
FREESE AND NICHOLS, INC. (CONSULTANT)
FOR
PROFESSIONAL
ENGINEERING SERVICES

Made as of the _____ day of _____ in the year Two Thousand Ten:

BETWEEN the City: **The City of Frisco, Texas**
6101 Frisco Square Boulevard
Frisco, Texas 75034
Telephone: (972) 292-5412
Facsimile: (972) 292-5016

and the Consultant: **Freese and Nichols, Inc.**
4055 International Plaza, Suite 200
Fort Worth, Texas 76109-4895
Telephone: (817) 735-7300
Facsimile: (817) 735-7492

for the following Project: **Master Agreement for On-Call Professional Civil Engineering Services, Water and Wastewater Modeling, Contract Number 2010-002**

The City and the Consultant agree as set forth below.

THIS AGREEMENT is made and entered by and between the **City of Frisco, Texas**, a Home-Rule Municipal Corporation, hereinafter referred to as "City," and **Freese and Nichols, Inc.**, hereinafter referred to as "Consultant," to be effective from and after the date as provided herein, hereinafter referred to as "Agreement."

WHEREAS, the City desires to engage the services of the Consultant to perform professional civil engineering services relating to water and wastewater modeling, hereinafter referred to as "Project;" and

WHEREAS, the Consultant desires to render such professional civil engineering services for the City upon the terms and conditions provided herein.

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

That for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the parties agree as follows:

**ARTICLE 1
CONSULTANT'S SERVICES**

- 1.1 **Employment of the Consultant** – The City hereby agrees to retain the Consultant to perform professional engineering services in connection with the Project. Consultant agrees to perform such services in accordance with the terms and conditions of this Agreement. Consultant further agrees that if any employee of the Consultant, who is performing the day-to-day services under this Agreement for the Project, is separated, for any reason, from employment with the Consultant, the Consultant shall notify, in writing, a minimum of five (5) business days prior to said separation unless circumstances reasonably warrant a shorter notice period which shall not exceed two (2) business days following the separation.
- 1.2 **Scope of Services** – The parties agree that Consultant shall perform such services as are set forth and described in Exhibit "A," which is attached hereto and incorporated herein by reference for all purposes. The parties understand and agree that deviations or modifications to the scope of services described in Exhibit "A," in the form of written change orders, may be authorized from time to time by the City.
 - 1.2.1 **Requirement of Written Change Order** – "Extra" work, or "claims" invoiced as "extra" work, or "claims" which have not been issued as a duly executed, written change order by the Frisco City Manager, will not be authorized for payment and/or shall not become part of the subcontracts. A duly executed written change order shall be preceded by the Frisco City Council's authorization for the Frisco City Manager to execute said change order.
 - 1.2.2 **DO NOT PERFORM ANY EXTRA WORK AND/OR ADDITIONAL SERVICES WITHOUT A DULY EXECUTED WRITTEN CHANGE ORDER ISSUED BY THE FRISCO CITY MANAGER.** Project Managers, Superintendents, and/or Inspectors of the City are not authorized to issue verbal or written change orders.
- 1.3 **Schedule of Work** – The Consultant agrees to commence work immediately upon the execution of this Agreement, and to proceed diligently with said work to completion as described in the Compensation Schedule / Project Billing / Project

Budget attached hereto as Exhibit "B" and incorporated herein by reference for all purposes, but in no event shall the Project be completed any later than July 1, 2011; however City shall have sole discretion to authorize two (2) twelve month (12) renewals of this Agreement to extend the completion of the Project to a date no later than July 1, 2013.

ARTICLE 2 THE CITY'S RESPONSIBILITIES

City shall do the following in a timely manner so as not to delay the services of Consultant:

- 2.1 **Project Data** – The City shall furnish required information, that it currently has in its possession, as expeditiously as necessary for the orderly progress of the work, and the Consultant shall be entitled to rely upon the accuracy and completeness thereof.
- 2.2 **City Project Manager** – The City shall designate, when necessary, a representative authorized to act on the City's behalf with respect to the Project (the "Project Manager"). The City or such authorized representative shall examine the documents submitted by the Consultant and shall render any required decisions pertaining thereto as soon as practicable so as to avoid unreasonable delay in the progress of the Consultant's services. The Project Manager is not authorized to issue verbal or written change orders for "extra" work or "claims" invoiced as "extra" work.

ARTICLE 3 CONSULTANT'S COMPENSATION

- 3.1 **Compensation for Consultant's Services** – As described in "Article 1, Consultant's Services," compensation for this Project shall be on a basis as defined by City's issuance of written Task Orders to Consultant authorizing work on the Project; written Task Orders issued by the City to Consultant shall not exceed a total amount of Eighty Thousand and 00/100 Dollars (\$ 80,000.00), ("Consultant's Fee") and shall be paid in accordance with Article 3, the Compensation Schedule / Project Billing / Project Budget as set forth in Exhibit "B" and the Task Orders issued by City in writing to Consultant, in the format as stated in Exhibit "A."
- 3.1.1 **Completion of Record Documents** – City and Consultant agree that the completion of the Record Documents and/or "As-Built" Documents, including hard copy formatting and electronic formatting, shall be completed, submitted to, and accepted by the City prior to payment of the final five percent (5%) of the Consultant's Fee for work authorized by City on a Task Order basis. The electronic formatting shall be consistent with the standards established in Exhibit "C," City of Frisco Guidelines for

Computer Aided Design and Drafting ("CADD"). Completion of the Record Documents and/or "As-Built" Documents shall be included in the Consultant's Fee and considered to be within the Scope of Services defined under this Agreement.

3.1.2 **Disputes between City and Construction Contractor** – If the Project involves the Consultant performing Construction Administration Services relating to an agreement between a Construction Contractor (the "Contractor") and the City, and upon receipt of a written request by City, Consultant shall research previous and existing conditions of the Project, and make a determination whether or not to certify that sufficient cause exists for the City to declare the Contractor in default of the terms and conditions of the agreement. Consultant shall submit his findings in writing to the City, or submit a written request for a specific extension of time (including the basis for such extension), within fifteen (15) calendar days of receipt of the written request from the City. City and Consultant agree that if requested by the City, completion of this task shall be included in the Consultant's Fee and considered to be within the Scope of Services as defined under this Agreement.

3.1.3 **Consultation and Approval by Governmental Authorities and Franchised Utilities** – Consultant shall be responsible for identifying and analyzing the requirements of governmental agencies and all franchise utilities involved with the Project, and to participate in consultation with said agencies in order to obtain all necessary approvals and/or permissions. The Consultant shall be responsible for preparation and timely submittal of documents required for review, approval, and/or recording by such agencies. The Consultant shall be responsible for making such changes in the Construction Documents as may be required by existing written standards promulgated by such agencies at no additional charge to City.

3.2 **Direct Expenses** – Direct Expenses are included in the Consultant's Fee as described in Article 3.1 and include actual reasonable and necessary expenditures made by the Consultant and the Consultant's employees and subcontractors in the interest of the Project. All submitted Direct Expenses are to be within the amounts as stated in the Compensation Schedule / Project Billing / Project Budget set forth in Exhibit "B," and consistent with Exhibit "D," City of Frisco Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses. The Consultant shall be solely responsible for the auditing and accuracy of all Direct Expenses, including those of its subcontractors, prior to submitting to the City for reimbursement, and shall be responsible for the accuracy thereof. Any over-payment by the City for errors in submittals for reimbursement may be deducted from the Consultant's subsequent payment for services; provided, however this shall not be the City's sole and exclusive remedy for said over-payment.

3.3 **Additional Services** – The Consultant shall provide the services as described in the Scope of Services as set forth in Exhibit "A" of this Agreement. If authorized in writing by the City, the Consultant shall provide additional services, to be compensated on an hourly basis in accordance with this paragraph ("Additional Services"). These services may include, but are not limited to:

3.3.1 Additional meetings, hearings, work-sessions, or other similar presentations which are not provided for or contemplated in the Scope of Services described in Exhibit "A."

3.3.2 Additional drafts and revisions to the Project which are not provided for or contemplated in the Scope of Services as described in Exhibit "A."

3.3.3 Additional copies of final reports and construction plans which are not provided for or contemplated in the Scope of Services as described in Exhibit "A."

3.3.4 Photography, professional massing models which are not provided for or contemplated in the Scope of Services as described in Exhibit "A."

3.3.5 Compensation for Additional Services authorized by the City shall be in addition to the Consultant's Fee and shall be based on direct billable labor rates and expenses.

3.3.6 Compensation for Additional Services authorized by the City shall be in addition to the Consultant's Fee and shall be based on an hourly basis according to the following personnel rates. The rates set forth in this chart are subject to reasonable change provided prior written notice of said change is given to City.

Hourly Billable Rates by Position

<i>Name</i>	<i>Position</i>	<i>Hourly Rate</i>
--	Principal	\$ 225.00 - \$ 285.00
--	Group Manager	\$ 205.00 - \$ 285.00
--	Engineer (PE)	\$ 115.00 - \$ 170.00
--	Engineer (EIT)	\$ 85.00 - \$ 130.00
--	GIS Coordinator	\$ 90.00 - \$ 130.00
--	GIS Analyst	\$ 60.00 - \$ 130.00
--	Operations Analyst	\$ 80.00 - \$ 140.00
--	Contract Administrator	\$ 75.00 - \$ 115.00
--	Word Processor	\$ 55.00 - \$ 90.00
--	Intern	\$ 45.00 - \$ 75.00

3.4 **Invoices** – No payment to Consultant shall be made until the Consultant tenders an invoice to the City. The Consultant shall submit monthly invoices for services

rendered, based upon the actual percentage of work complete at the time the invoice is prepared, or are to be mailed to City immediately upon completion of each individual task listed in Exhibit "B." On all submitted invoices for services rendered and work completed on a monthly basis, Consultant shall include appropriate background materials to support the submitted charges on said invoice. Such background material shall include, but is not limited to, employee timesheets, invoices for work obtained from other parties, and receipts and/or log information relating to Direct Expenses. All invoices for payment shall provide a summary methodology for administrative markup and/or overhead charges.

- 3.5 **Timing of Payment** – City shall make payment to Consultant for said invoices within thirty (30) days following receipt and acceptance thereof. The parties agree that payment by City to Consultant is considered to be complete upon mailing of payment by City. Furthermore, the parties agree that the payment is considered to be mailed on the date that the payment is postmarked.
- 3.6 **Disputed Payment Procedures** – In the event of a disputed or contested billing by City, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. City shall notify Consultant of a disputed invoice, or portion of an invoice, in writing by the twenty-first (21st) calendar day after the date the City receives the invoice. City shall provide Consultant an opportunity to cure the basis of the dispute. If a dispute is resolved in favor of the Consultant, City shall proceed to process said invoice, or the disputed portion of the invoice, within the provisions of Article 3.5. If a dispute is resolved in favor of the City, Consultant shall submit to City a corrected invoice, reflecting any and all payment(s) of the undisputed amounts, documenting the credited amounts, and identifying outstanding amounts on said invoice to aid City in processing payment for the remaining balance. Such revised invoice shall have a new invoice number, clearly referencing the previous submitted invoice. City agrees to exercise reasonableness in contesting any billing or portion thereof that has background materials supporting the submitted charges.
- 3.7 **Failure to Pay** – Failure of the City to pay an invoice, for a reason other than upon written notification as stated in the provisions of Article 3.6 to the Consultant within sixty (60) days from the date of the invoice shall grant the Consultant the right, in addition to any and all other rights provided, to, upon written notice to the City, suspend performance under this Agreement, and such act or acts shall not be deemed a breach of this Agreement. However, Consultant shall not suspend performance under this Agreement prior to the tenth (10th) calendar day after written notice of suspension was provided to City, in accordance with Chapter 2251, Subchapter "D" ("Remedy for Nonpayment") of the Texas Government Code. The City shall not be required to pay any invoice submitted by the Consultant if the Consultant breached any provision(s) herein.
- 3.8 **Adjusted Compensation** – If the Scope of the Project or if the Consultant's services are materially changed due to no error on behalf of Consultant in the

performance of services under this Agreement, the amounts of the Consultant's compensation shall be equitably adjusted as approved by City. Any additional amounts paid to the Consultant as a result of any material change to the Scope of the Project shall be authorized by written change order duly executed by both parties before the services are performed.

- 3.9 **Project Suspension** – If the Project is suspended or abandoned in whole or in part for more than three (3) months, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to suspension or abandonment. In the event of such suspension or abandonment, Consultant shall deliver to City all finished or unfinished documents, data, studies, drawings, maps, models, reports, photographs, and/or any other items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment. If the Project is resumed after being suspended for more than three (3) months, the Consultant's compensation shall be equitably adjusted as approved by the City. Any additional amounts paid to the Consultant after the Project is resumed shall be agreed upon in writing by both parties before the services are performed.

ARTICLE 4 OWNERSHIP OF DOCUMENTS

- 4.1 **Documents Property of the City** – The Project is the property of the City, and Consultant may not use the documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs, and/or any materials for any other purpose not relating to the Project without City's prior written consent. City shall be furnished with such reproductions of the Project, plans, data, documents, maps, and any other information as defined in Exhibit "A." Upon completion of the work, or any earlier termination of this Agreement under Article 3 and/or Article 8, Consultant will revise plans, data, documents, maps, and any other information as defined in Exhibit "A" to reflect changes while working on the Project through the date of completion of the work, as solely determined by City, or the effective date of any earlier termination of this Agreement under Article 3 and/or Article 8, and promptly furnish the same to the City in an acceptable electronic format. All such reproductions shall be the property of the City who may use them without the Consultant's permission for any purpose relating to the Project, including, but not limited to, completion of the Project, and/or additions, alterations, modifications, and/or revisions to the Project. Any reuse of the documents not relating to the Project shall be at the City's own risk.
- 4.2 **Documents Subject to Laws Regarding Public Disclosure** – Consultant acknowledges that City is a governmental entity and that all documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs, and/or any items prepared or furnished by Consultant (and Consultant's professional associates and/or Sub-consultants) under this Agreement are instruments of service in respect of the Project and property of the City and upon completion of

the Project shall thereafter be subject to the Texas Public Information Act (Texas Government Code, Chapter 552) and any other applicable laws requiring public disclosure of the information contained in said documents.

ARTICLE 5

CONSULTANT'S INSURANCE REQUIREMENTS

- 5.1 **Required General Liability Insurance** – Consistent with the terms and provisions of Exhibit "E," City of Frisco Contractor Insurance Guidelines, Consultant shall maintain, at no expense to City, a general liability insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), authorized to transact business in the State of Texas, in an amount not less than One Million and 00/100 Dollars (\$1,000,000.00) for each occurrence, and Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate. Such policy shall name the City, its officers, agents, representatives, and employees as additional insured as to all applicable coverage. Such policy shall provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates evidencing such coverage prior to commencing work on the Project.
- 5.2 **Required Professional Liability Insurance** – Consistent with the terms and provisions of Exhibit "E," City of Frisco Contractor Insurance Guidelines, Consultant shall maintain, at no expense to City, a professional liability (errors and omissions) insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), authorized to transact business in the State of Texas, in an amount not less than One Million and 00/100 Dollars (\$1,000,000.00) for each claim, and Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates evidencing such coverage prior to commencing work on the Project.
- 5.3 **Required Workers Compensation Insurance** – Consistent with the terms and provisions of Exhibit "E," City of Frisco Contractor Insurance Guidelines, Consultant shall maintain, at no expense to City, all Statutory Workers Compensation Insurance as required by the laws of the State of Texas. Such insurance policy shall be with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent service(s), and authorized to transact business in the State of Texas. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, evidenced by return receipt or United

States Certified Mail. Consultant shall furnish City with certificates evidencing such coverage prior to commencing work on the Project.

5.4 Circumstances Requiring Umbrella Coverage or Excess Liability Coverage

– If Project size and scope warrant, and if identified on the checklist located in Exhibit "E," City of Frisco Contractor Insurance Guidelines, Consultant shall maintain, at no expense to the City, an umbrella coverage or excess liability coverage insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), authorized to transact business in the State of Texas, in an amount of Two Million and 00/100 Dollars (\$2,000,000.00). Such policy shall require the provision of written notice to the City at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates evidencing such coverage prior to commencing work on the Project.

**ARTICLE 6
CONSULTANT'S ACCOUNTING RECORDS**

Records of Direct Expenses and expenses pertaining to services performed in conjunction with the Project shall be kept on the basis of generally accepted accounting principles. Invoices will be sent to the City as indicated in Article 3.4. Copies of employee time sheets, receipts for direct expense items and other records of Project expenses will be included in the monthly invoices.

**ARTICLE 7
AUDITS AND RECORDS / PROHIBITED INTEREST / VENDOR DISCLOSURE**

The Consultant agrees that at any time during normal business hours and as often as the City may deem necessary, Consultant shall make available to representatives of the City for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of the City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, and for a period of four (4) years from the date of final settlement of this Agreement or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

The Consultant agrees that it is aware of the prohibited interest requirement of the City Charter, which is repeated on the Affidavit, attached hereto as Exhibit "F" and incorporated herein for all purposes, and will abide by the same. Further, a lawful representative of Consultant shall execute the Affidavit attached hereto as Exhibit "F." Consultant understands and agrees that the existence of a prohibited interest during the term of this Agreement will render the Agreement voidable.

Consultant agrees that it is further aware of the vendor disclosure requirements set forth in Chapter 176, Local Government Code, as amended, and will abide by the same. In this connection, a lawful representative of Consultant shall execute the Conflict of Interest Questionnaire, Form CIQ, attached hereto as Exhibit "G" and incorporated herein for all purposes.

ARTICLE 8 TERMINATION OF AGREEMENT / REMEDIES

City may, upon thirty (30) days written notice to Consultant, terminate this Agreement, for any reason or no reason at all, before the termination date hereof, and without prejudice to any other remedy it may have. If City terminates this Agreement due to a default of and/or breach by Consultant and the expense of finishing the Project exceeds the Consultant's Fee at the time of termination, Consultant waives its right to any portion of Consultant's Fee as set forth in Article 3 herein and agrees to pay any costs over and above the fee which the City is required to pay in order to finish the Project. On any default and/or breach by Consultant, City may elect not to terminate the Agreement, and in such event it may make good the deficiency in which the default consists, and deduct the costs from the Consultant's Fee due Consultant as set forth in Article 3 herein. If City terminates this Agreement and Consultant is not in default of the Agreement, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of the City in accordance with the provisions of this Agreement prior to termination.

In the event of any termination, Consultant shall deliver to City all finished and/or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs and/or any items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment.

The rights and remedies provided by this Agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive its rights to use any or all other remedies. These rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

ARTICLE 9 DISPUTE RESOLUTION / MEDIATION

In addition to all remedies at law, the parties may resolve/mediate any controversy, claim or dispute arising out of or relating to the interpretation or performance of this Agreement, or breach thereof, by voluntary mediation to be conducted by a mutually acceptable mediator.

ARTICLE 10

INDEMNITY

CONSULTANT SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES FROM AND AGAINST ALL DAMAGES, INJURIES (INCLUDING DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY), TO THE EXTENT CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL WRONGFUL ACT AND/OR OMISSION OF CONSULTANT, ITS OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FROM WHOM CONSULTANT IS LEGALLY RESPONSIBLE, IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT AND/OR ARISING OUT OF GOODS AND/OR SERVICES PROVIDED BY CONSULTANT PURSUANT TO THIS AGREEMENT, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF THE CITY (HEREINAFTER "CLAIMS"). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM "CLAIMS" IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST CITY BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN CONSULTANT AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE CONSULTANT, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE. CONSULTANT IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS; PROVIDED, HOWEVER, IF A COURT OF COMPETENT JURISDICTION SIGNS A JUDGMENT THAT BECOMES FINAL AND NON-APPEALABLE, DETERMINING THAT THE CITY (WITHOUT

WAIVING ANY GOVERNMENTAL IMMUNITY) HAS JOINT, CONCURRENT OR SOLE NEGLIGENCE FOR THE CLAIMS, IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS (THE "JUDGMENT"), THEN CONSULTANT IS NOT REQUIRED TO INDEMNIFY OR DEFEND THE CITY TO THE EXTENT OF THE NEGLIGENCE APPORTIONED TO THE CITY FOR EACH CAUSE(S) OF ACTION IDENTIFIED IN THE JUDGMENT. IN THE EVENT THE JUDGMENT PROVIDES THAT CITY IS JOINTLY, CONCURRENTLY, OR SOLELY NEGLIGENT FOR THE CLAIMS REFERRED TO THEREIN, CITY AGREES TO REIMBURSE CONSULTANT FOR ALL REASONABLE AND NECESSARY COSTS INCURRED AND PAID BY CONSULTANT THAT ARE ATTRIBUTABLE TO CITY'S PERCENTAGE OF JOINT, CONCURRENT, OR SOLE NEGLIGENCE, AS SET FORTH IN THE JUDGMENT, INCLUDING REASONABLE AND NECESSARY ATTORNEY'S FEES AND EXPENSES, TO CONSULTANT WITHIN SIXTY (60) DAYS OF THE DATE OF THE JUDGMENT (THE "REIMBURSEMENT ALLOCATION").

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY CONSULTANT IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF CONSULTANT'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONSULTANT'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONSULTANT SHALL RETAIN CITY-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONSULTANT FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND CONSULTANT SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY. THE RIGHTS AND OBLIGATIONS CREATED BY THIS PARAGRAPH SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

ARTICLE 11 NOTICES

Consultant agrees that all notices or communications to City permitted or required under this Agreement shall be delivered to City at the following addresses:

Paul Knippel, P.E.
Director of Engineering Services

City of Frisco
6101 Frisco Square Boulevard
Frisco, Texas 75034

City agrees that all notices or communication to Consultant permitted or required under this Agreement shall be delivered to Consultant at the following addresses:

Thomas Haster, P.E.
Principal – Manager Water / Wastewater Engineering
Freese and Nichols, Inc.
4055 International Plaza, Suite 200
Fort Worth, Texas 76109-4895

Any notice provided in writing under the terms of this Agreement by either party to the other shall be in writing and may be effected by registered or certified mail, return receipt requested.

All notices or communication required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is postmarked by the sending party. Each party may change the address to which notice may be sent to that party by giving notice of such change to the other party in accordance with the provisions of this Agreement.

ARTICLE 12 MISCELLANEOUS

12.1 **Complete Agreement** – This Agreement, including the exhibits hereto labeled "A" through "G," all of which are incorporated herein for all purposes, constitute the entire Agreement by and between the parties regarding the subject matter hereof and supersedes all prior and/or contemporaneous written and/or oral understandings. This Agreement may not be amended, supplemented, and/or modified except by written agreement duly executed by both parties. The following exhibits are attached below and made a part of this Agreement:

- 12.1.1 Exhibit "A," Scope of Services.
- 12.1.2 Exhibit "B," Compensation Schedule / Project Billing / Project Budget.
- 12.1.3 Exhibit "C," City of Frisco Guidelines for Computer Aided Design and Drafting (CADD).
- 12.1.4 Exhibit "D," City of Frisco Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses.
- 12.1.5 Exhibit "E," City of Frisco Contractor Insurance Guidelines.

12.1.7 Exhibit "F," Affidavit.

12.1.8 Exhibit "G," Conflict of Interest Questionnaire, Form CIQ.

- 12.2 **Assignment and Subletting** – The Consultant agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the City. The Consultant further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Consultant of its full obligations to the City as provided by this Agreement. All such approved work performed by assignment or subletting shall be billed through Consultant, and there shall be no third party billing.
- 12.3 **Successors and Assigns** – City and Consultant, and their partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives, and administrators are hereby bound to the terms and conditions of this Agreement.
- 12.4 **Severability** – In the event of a term, condition, or provision of this Agreement is determined to be invalid, illegal, void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect as if such invalid, illegal, void, unenforceable or unlawful provision had never been contained herein.
- 12.5 **Venue** – This entire Agreement is performable in Collin County, Texas and the venue for any action related directly or indirectly, to this Agreement or in any manner connected therewith shall be in Collin County, Texas, and this Agreement shall be construed under the laws of the State of Texas.
- 12.6 **Execution / Consideration** – This Agreement is executed by the parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.
- 12.7 **Authority** – The individuals executing this Agreement on behalf of the respective parties below represent to each other that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the other party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.
- 12.8 **Waiver** – Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall

not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.

- 12.9 **Headings** – The headings of the various sections of this Agreement are included solely for convenience of reference and are not to be full or accurate descriptions of the content thereof.
- 12.10 **Multiple Counterparts** – This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.
- 12.11 **Sovereign Immunity** – The parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.
- 12.12 **Additional Representations** – Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had the opportunity to confer with its counsel.
- 12.13 **Miscellaneous Drafting Provisions** – This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply.
- 12.14 **No Third Party Beneficiaries** - Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.
- 12.15 **Indemnity** – The parties agree that the Indemnity provision set forth in Article 10 herein is conspicuous and the parties have read and understood the same.
- 12.16 **Appropriation of Funds** – Funds are not presently budgeted for City's performance under this Agreement beyond the end of the City's 2009-2010 fiscal year. City will give Consultant sixty days (60) notice if funds for City's performance are not budgeted to continue beyond that time. City shall have no liability for payment of any money for services performed after the end of City's 2009-2010 fiscal year unless and until such funds are budgeted.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the latest day as reflected by the signatures below.

Effective Date: _____

CITY

The City of Frisco, Texas

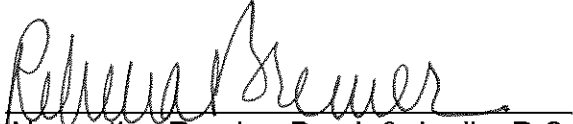
CONSULTANT

Freese and Nichols, Inc.

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:


Abernathy, Roeder, Boyd, & Joplin, P.C.

STATE OF TEXAS:

COUNTY OF COLLIN:

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED **GEORGE PUREFOY**, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS ____ DAY OF _____, 2010.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: _____

STATE OF TEXAS:

COUNTY OF _____:

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED _____, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS ____ DAY OF _____, 2010.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: _____

EXHIBIT "A"
SCOPE OF SERVICES

**Agreement by and between
the City of Frisco, Texas (City)
and Kimley-Horn and Associates, Inc. (Consultant)
for Master Agreement for On-Call Professional Civil Engineering Services,
Water and Wastewater Modeling, Contract Number 2010-002 (Project)**

I. PROJECT DESCRIPTION.

Consultant shall provide water and wastewater modeling services necessary for: (1) development and assessment of engineering design and operational options related to water and wastewater system modifications and investigations; (2) adjustments to the Master Plan; (3) the analysis of proposed developments; (4) water and wastewater operational analysis and updating the water and wastewater models to keep them properly calibrated and reflective of existing infrastructure and conditions.

A. Water and Wastewater Model Updates –

1. Semiannual water model update tasks shall include: (1) importing, checking connectivity and data refinement; (2) reviewing and modifying future model runs to eliminate Capital Improvement Plan and demand duplication; (3) assigning C-factors; (4) calculating updated water demands; (5) assigning node information such as elevations and demands; (6) running the model and checking for errors; (7) and performing quality control on the model.
2. Semiannual wastewater model update tasks shall include: (1) importing, checking connectivity and data refinement; (2) reviewing and modifying future model runs to eliminate Capital Improvement Plan and load duplication; (3) assigning Manning's N values; (4) calculating updated wastewater loads; (5) assigning node information such as rim and invert elevations and loads; (6) running the model and checking for errors; (7) and performing quality control on the model.

B. Development Reviews –

1. Water model development review tasks shall include: (1) calculating average day, maximum day and peak hour demands for new developments; (2) adding proposed water lines and nodes to model; (3) assigning C-factors, water demands and elevations; (4) running the model at maximum day demand for required fire flow; (5) writing a memorandum detailing results of model runs and proposed recommendations; (6) and submitting reports as stated in Attachment "B" to this Scope of Services.
2. Wastewater model development review tasks shall include: (1) calculating average day peak 2-hour loads for new developments; (2) adding proposed wastewater lines, manholes and lift stations to model; (3) assigning

EXHIBIT "A"

SCOPE OF SERVICES

Manning's N values; (4) wastewater load and rim and invert elevations; (5) running the model peak wet weather flow conditions; (6) writing a memorandum detailing results of model runs and proposed recommendations; (7) and submitting reports as stated in Attachment "B" to this Scope of Services.

C. Operational Analysis Assistance –

1. Tasks related to development and assessment of operational options related to water and wastewater system modifications shall include: (1) researching engineering design and operational options; (2) conducting field investigations when necessary and as approved by City; (3) conceptualizing and modeling various design and operational scenarios resulting from the research; (4) developing recommendations and cost estimates for selected options; (5) writing a memorandum detailing results of model runs and proposed recommendations; and (6) submitting reports as stated in Attachment "B" to this Scope of Services.

II. INDIVIDUAL TASK ORDERS.

- A. **Issuance of Individual Task Orders** – City will issue in writing an Individual Task Order to Consultant, authorizing the Consultant to perform work under this Agreement. Consultant shall not perform work and/or services outside the Scope of Services of the Agreement. All work authorized by the City shall be issued as a duly-executed, written Individual Task Order. An example of Individual Task Orders to be issued by City under this Agreement is provided in Attachment "A" to this Scope of Services.
- B. **Issuance of Task Orders across Project Categories** – City, at its sole cost discretion, will issue Individual Task Orders to Consultant, authorizing work in a specific category as defined in the Scope of Services or among various work categories defined in the Scope of Services. City reserves the right to solely determine the issuance of Individual Task Orders to Consultant for work in all applicable work categories or among specific work categories, for any reason or no reason at all.

III. TERM OF AGREEMENT / RENEWAL OPTION.

- A. Upon execution the term of the Agreement is to run through July 1, 2011.
- B. At City's sole discretion, the City may elect to exercise one (1) renewal option to extend the term of the Agreement for another twelve (12) month period.

EXHIBIT "A"
SCOPE OF SERVICES

- C. Prior to the expiration of the Agreement, City shall give Consultant thirty (30) days written notice of City's decision to exercise the renewal option on the Agreement to extend the term for an additional twelve (12) month period.
- D. Consultant shall not perform work and/or services authorized by written Task Order within thirty (30) days of the expiration of the Agreement without having received written notice of extension of the term of the Agreement from City.

IV. CHANGE ORDERS AND/OR AMENDMENTS.

- A. All Task Orders authorizing work under this Agreement shall be within the limits as stated in the Agreement. The parties understand and agree that deviations or modifications to the scope of services described in Exhibit "A," in the form of written change orders, may be authorized from time to time by the City.
- B. All change orders to the Agreement are to be in accordance with Article 1 of the Agreement.
- C. Consultant shall not perform work and/or services authorized by Task Order that are not defined within Exhibit "A," Scope of Services of the Agreement.

V. ATTACHMENTS.

- A. Attachment "A," City of Frisco Task Order for On-Call Professional Civil Engineering Services.
- B. Attachment "B," Technical Memorandum Submittal Requirements for Work Performed under the Agreement.
- C. Attachment "C," General Requirements for Work Performed under the Agreement.

EXHIBIT "A"
SCOPE OF SERVICES

ATTACHMENT "A"

**Task Order to an Agreement
by and between the City of Frisco, Texas (City)
and Kimley-Horn and Associates, Inc. (Consultant)
to perform On-Call Professional Civil Engineering Services,
Water and Wastewater Modeling, Contract Number 2010-002 (Project)**

TASK ORDER NUMBER 2010-002-01
(Work Description)

THIS TASK ORDER is made pursuant to the terms and conditions of the Professional Services Agreement Number 2010-002 (the "Agreement") entered into by and between the City of Frisco, Texas (City) and Freese and Nichols, Inc. (Consultant).

- I. **ARTICLE 1.** Consultant will perform the on-call professional civil engineering services in accordance with the Agreement and the Scope of Services / Compensation Schedule / Budget Summary attached hereto as Exhibit "A" and incorporated herein by reference for all purposes.
- II. **ARTICLE 2.** Compensation for this Task Order shall be on a type basis, not to exceed Dollar Amount Specified and 00/100 Dollars (\$ 0.00), and shall be paid in accordance with Article 3 of the Agreement and the Scope of Services / Compensation Schedule / Budget Summary as set forth in Exhibit "A" of the Task Order. Consultant shall not exceed the amount specified in this Task Order without the issuance of a supplemental Task Order issued by City in writing to Consultant.
- III. **ARTICLE 3.** City and Consultant agree that in accordance with Article 3, Paragraph 3.1.1 of the Agreement, City will withhold payment of the final five percent (5%) of Consultant's Fee for work authorized by this Task Order, or Dollar Amount Specified and 00/100 Dollars (\$ 0.00), pending the Consultant's completion of the Record Documents and/or "As-Built" Documents for the authorized work.
- IV. **ARTICLE 4.** This Task Order shall become effective on the latest date as reflected by the signatures below and shall terminate on Day, Month, Year unless extended by a supplemental Task Order issued by City in writing to Consultant.

- V. **ARTICLE 5.** The City Project number and the Project Account Code are the following:

City CIP Number:

City Project Account Code:

- VI. **ARTICLE 6.** Upon execution of this Task Order, the funds available under the Agreement are revised to the following:

Current Project Budget (As Revised by Approved Task Orders):	\$ 80,000.00
Approved Work by this Task Order:	\$ 0.00
Revised Project Budget:	\$ <u>80,000.00</u>

- VII. **ARTICLE 7.** The following exhibits are attached below and made a part of this Task Order:

A. Exhibit "A," Scope of Services / Compensation Schedule / Budget Summary.

- VIII. **ARTICLE 8.** This Task Order does not waive the parties' responsibilities and obligations provided under the Agreement.

IN WITNESS WHEREOF, the parties have executed this Task Order and caused this Task Order to be effective on the latest day as reflected by the signatures below.

CITY

The City of Frisco, Texas

CONSULTANT

Freese and Nichols, Inc.

By: _____

Name: Elizabeth Metting, P.E.

Title: Assistant Director/City Engineer

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT "A"
SCOPE OF SERVICES

Attachment "B"
Technical Memorandum Submittal Requirements for
Work Performed under the Agreement

- I. **Technical Memorandum Submittal Requirements.** Unless hard copies are requested by the City, Consultant shall submit draft and final modeling results to City electronically, in Adobe portable document file (.pdf) format, unless an alternate electronic format is requested by the City. If hard copies are requested, two (2) copies of each shall be submitted. Each set of draft technical memorandums (TM's) shall be marked as "DRAFT." These shall be reviewed and checked by the City and returned to the Consultant for corrections. The Consultant shall address corrections, then seal, sign and date the approved final TM's. All documents, provisions, attachments and correspondence provided in accordance with this contract shall be dated.

EXHIBIT "A"
SCOPE OF SERVICES

Attachment "C"
General Requirements for Work Performed under the Agreement

I. GENERAL REQUIREMENTS.

- A. Consultant shall update the H2OMap Water and H2OMap Sewer models with Geographic Information Systems (GIS) updates on a regular basis, as requested in writing by City. The shapefiles or database containing the updates will be provided by the City to the Consultant along with the plat information showing parcels, land use, and water system connectivity.
- B. Consultant shall coordinate and incorporate the following items into the modeling efforts:
 - 1. Research plans for City utilities and facilities.
 - 2. Geographic Information Systems (GIS) (parcels, land use and water coverages).
 - 3. Evaluate existing water and wastewater systems and make recommendations on existing lines based on City design criteria, Texas Commission on Environmental Quality (TCEQ) requirements and distribution / collection systems models as requested.
 - 4. Prepare Consultants Opinion of Probable Construction Cost (OPCC) for alternatives.
 - 5. Incorporate semiannual updates from the City's Geographic Information Systems (GIS) into the Water and Wastewater Models.
 - 6. Provide recommendations to City regarding water and wastewater lines and facilities necessary for proposed development as requested.

EXHIBIT "B"
COMPENSATION SCHEDULE / PROJECT BILLING / PROJECT BUDGET

Agreement by and between
the City of Frisco, Texas (City)
and Kimley-Horn and Associates, Inc. (Consultant)
for Master Agreement for On-Call Professional Civil Engineering Services, Water
and Wastewater Modeling, Contract Number 2010-002 (Project)

I. COMPENSATION SCHEDULE / PROJECT BILLING SUMMARY.

MONTH, DATE, YEAR	DOLLAR AMOUNT	TASK COMPLETED
June 15, 2010	--	City executes Agreement and Issues Notice to Proceed to Consultant.
July 1, 2010	--	Consultant's receipt of fully executed Agreement.
June 15, 2010 through July 1, 2011	\$ 80,000.00	Consultant to perform services as authorized by City's issuance of written Task Orders (Work and payment schedule shall be as defined in the authorized Task Orders).
July 1, 2011	--	Expiration of Agreement; City shall solely determine whether to exercise two (2) renewal options to extend the Agreement for a period of twelve (12) months per renewal option.
<i>TOTAL CONSULTANT'S FEE (NOT-TO-EXCEED)</i>	\$ 80,000.00	--

II. PROJECT BUDGET SUMMARY.

A. Basic Services.

- | | |
|---|---------------------|
| 1. Work Authorized by written Task Orders. | \$ 80,000.00 |
| 2. <u>Total Basic Services (Not-To-Exceed).</u> | <u>\$ 80,000.00</u> |

B. <u>Grand Total, Consultant's Fee (Not-To-Exceed)</u>	<u>\$ 80,000.00</u>
--	----------------------------

EXHIBIT "C"
CITY OF FRISCO
GUIDELINES FOR COMPUTER AIDED DESIGN AND DRAFTING (CADD)

1. Files shall be submitted in DWG/DXF format.
2. Files shall be georeferenced in the State Plane, Texas North Central FIPS 4202 (feet) coordinate system, using a datum of NAD 83.
3. If a surface adjustment factor is applied to the data, any surface adjustment factors used should be clearly documented on the drawing.
4. If submissions for the Project relate to a plat, the file submitted must match exactly the plat that is submitted for recording.
5. The file shall contain required features for the project type as detailed below:
 - a. Pre-Construction/As-Built Plans and/or Record Documents:
 - i. Layers from Final Plat Requirements as Applicable to Project Type.
 - ii. Water Utility Features.
 - iii. Sanitary Sewer Features.
 - iv. Storm Sewer Features.
6. Each required feature group should be provided as a separate layer within the file.
7. Layer names should be representative of the information contained in the layer.
8. Line work should be continuous (e.g. no dashed lines in required layers) and complete (connecting lines should meet at corners) within the subdivision/project. Layers outside of project/subdivision boundary may be dashed in CAD data as required for Final Plats by Frisco Subdivision Ordinance Section 5.02.

EXHIBIT "D"
**CITY OF FRISCO GUIDELINES FOR DIRECT EXPENSES; GENERAL AND
ADMINISTRATIVE MARKUP; TRAVEL AND SUBSISTENCE EXPENSES**

- I. **CONSULTANT'S RESPONSIBILITY.** The Consultant shall be solely responsible for the auditing of all direct expenses, approved markup (general and/or administrative), and approved travel and/or subsistence charges, including those of its subcontractors, prior to submitting to the City for reimbursement, and Consultant shall be responsible for the accuracy thereof. Any over-payment by the City for errors in submittals for reimbursement may be deducted from the Consultant's subsequent payment(s) for services; however, this shall not be the City's sole and exclusive remedy for said over-payment.

II. **GUIDELINES FOR DIRECT EXPENSES.**

- A. **Local Transportation** – Transportation in connection with the Project, when such transportation is not a function of routine performance of the duties of the Consultant in connection with the Project, and when such transportation exceeds beyond fifty (50) miles from the Project site, shall be reimbursed at a standard mileage rate consistent with that as issued, and periodically revised, by the United States Internal Revenue Service (IRS). Under no circumstances shall City reimburse Consultant at a higher standard mileage rate or pay additional markup on charges for local transportation. Completion of City's Standard Mileage Log is required for submittal of these charges for reimbursement, including justification for each submitted expense.

Under no circumstances are charges associated with rental cars for local transportation eligible for reimbursement by City. Toll road subscriptions or toll plaza receipts are not reimbursable. Consultant agrees to place these standards in all subcontracts for work on the Project.

- B. **Supplies, Material, Equipment** – City shall reimburse the actual cost of other similar direct Project-related expenses, which are duly presented in advance and approved by City's Project Manager in writing.
- C. **Commercial Reproduction** – City shall reimburse the actual cost of reproductions, specifically limited to progress prints prepared for presentation to City at each phase of progress, and final Construction Documents prepared for distribution at bidding phase, provided that the Consultant has duly obtained at least three (3) quotations from commercial firms and has chosen the best value for the City. Consultant shall provide such documentation to City for review prior to submitting these expenses for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.
- D. **In-House Reproduction** - Consultant shall make arrangements with the City for prior approval of in-house reproduction rates prior to submitting these expenses for reimbursement. City shall provide Consultant with a standard format for documenting these charges. Completion of the City's reproduction log is required as a prerequisite for payment, including the number or reproductions,

EXHIBIT "D"

CITY OF FRISCO GUIDELINES FOR DIRECT EXPENSES; GENERAL AND ADMINISTRATIVE MARKUP; TRAVEL AND SUBSISTENCE EXPENSES

the date, time, description, the approved standard rate, and a justification for each submitted expense for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.

- E. **Commercial Plotting** – City shall reimburse the actual cost of plots, specifically limited to final documents, provided the Consultant has duly obtained at least three (3) quotations from commercial firms and has chosen the best value for the City. Consultant shall provide such documentation to City for review prior to submitting these expenses for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.
- F. **In-House Plotting** – Consultant shall make arrangements with City for prior written approval of in-house plotting rates prior to submitting these charges for reimbursement. City shall provide Consultant with a standard format for documenting these charges. Completion of the City's reproduction log is required as a prerequisite for payment, including the number of plots, the date, time, description, the approved standard rate, and a justification for each submitted charge for reimbursement.
- G. **Communications** – Reimbursement for expenses relating to electronic communications shall be limited to long-distance telephone or fax toll charges specifically required in the discharge of professional responsibilities related to the Project. Telephone service charges including office or cellular phones, WATTS, or Metro line services or similar charges are not reimbursable.
- H. **Postage, Mail, and Delivery Service** – City shall reimburse the actual cost of postage and delivery of Instruments of Service, provided the Consultant duly considers all circumstances (including available time for assured delivery) of the required delivery and selects the best value for the City, which may require comparison of delivery costs offered by three (3) or more sources or methods of delivery, which at a minimum shall include U.S. Mail. Courier service is acceptable only in circumstances requiring deadline-sensitive deliveries and not for the convenience of the Consultant and/or the Consultant's employees. Consultant agrees to place these standards in all subcontracts for work on the Project.
- I. **Meals and Other Related Charges** – Meals or any other related expenses are not reimbursable unless incurred outside a fifty (50) mile radius of the Project, and then only reimbursable for the actual cost subject to compliance with the City's currently adopted policy. Non-allowable costs include, but are not limited to, charges for entertainment, alcoholic beverages, and gratuities.

EXHIBIT "D"
**CITY OF FRISCO GUIDELINES FOR DIRECT EXPENSES; GENERAL AND
ADMINISTRATIVE MARKUP; TRAVEL AND SUBSISTENCE EXPENSES**

III. GUIDELINES FOR GENERAL AND ADMINISTRATIVE MARKUP.

- A. **Requirement of Prior Approval** – Consultant may be allowed to charge a General and/or Administrative Markup on work completed if Consultant can clearly define to City specifically what costs are included in the markup calculation. To apply General and/or Administrative Markup, Consultant must also document to City what costs would be considered direct costs. City shall issue approval in writing to allow Consultant to charge General and/or Administrative Markup. City reserves the right to reject any and all requests for General and/or Administrative Markup.

IV. GUIDELINES FOR TRAVEL AND SUBSISTENCE EXPENSES.

- A. **Requirement of Prior Approval** – City shall reimburse the actual cost of travel and/or subsistence expenses upon prior written approval by the City's Project Manager.
- B. **Adherence to Currently Adopted City Travel Policy** – Reimbursements shall be governed by the same travel policies provided for City employees according to current adopted policy. Prior to the event, Consultant shall request, and the City's Project Manager shall provide the provisions and the restrictions that apply to out-of-town reimbursements.

EXHIBIT "E"
CITY OF FRISCO CONTRACTOR INSURANCE GUIDELINES

I. REQUIREMENT OF GENERAL LIABILITY INSURANCE –

- A. Such policy shall name the City, its officers, agents, representatives, and employees as additional insured as to all applicable coverage with the exception of workers compensation insurance.
- A. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, evidenced by return receipt or United States Certified Mail.
- B. Such policy shall provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of the insurance.

II. INSURANCE COMPANY QUALIFICATION – All insurance companies providing the required insurance shall be authorized to transact business in the State of Texas, and shall have a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s).

III. CERTIFICATE OF INSURANCE – A Certificate of Insurance evidencing the required insurance shall be submitted with the contractor's bid or response to proposal. If the contract is renewed or extended by the City a Certificate of Insurance shall also be provided to the City prior to the date the contract is renewed or extended.

EXHIBIT "E"
CITY OF FRISCO CONTRACTOR INSURANCE GUIDELINES

IV. INSURANCE CHECKLIST – "X" means that the following coverage is required for this Agreement.

	Coverage Required	Limits
<u> X </u>	1. Worker's Compensation & Employer's Liability	<ul style="list-style-type: none"> ▪ Statutory Limits of the State of Texas
<u> X </u>	2. General Liability	<ul style="list-style-type: none"> ▪ Minimum \$1,000,000.00 each occurrence; ▪ Minimum \$2,000,000.00 in the aggregate.
<u> </u>	3. XCU Coverage	<ul style="list-style-type: none"> ▪ Minimum \$1,000,000.00 each occurrence; ▪ Minimum \$2,000,000.00 in the aggregate.
<u> X </u>	4. Professional Liability	<ul style="list-style-type: none"> ▪ Minimum \$ 1,000,000.00 each claim; ▪ Minimum \$ 2,000,000.00 in the aggregate.
<u> </u>	5. Umbrella Coverage or Excess Liability Coverage	<ul style="list-style-type: none"> ▪ An amount of \$ 2,000,000.00.
<u> X </u>	6. City named as additional insured on General Liability Policy. This coverage is primary to all other coverage the City may possess.	
<u> X </u>	7. General Liability Insurance provides for a Waiver of Subrogation against the City for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance.	
<u> X </u>	8. Thirty (30) days notice of cancellation, non-renewal, or material change required. The words "endeavor to" and "but failure" (to end of sentence) are to be eliminated from the Notice of Cancellation provision on standard ACORD certificates.	
<u> X </u>	9. Insurance company has a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s).	
<u> X </u>	10. The Certificate of Insurance must state the project title and bid number.	
<u> </u>	11. Other Insurance Requirements (State Below):	

EXHIBIT "F"
AFFIDAVIT

[illegible]

I, _____, a member of the Consultant team, make this affidavit and hereby on oath state the following:

I, and/or a person or persons related to me, have the following interest in a business entity that would be affected by the work or decision on the Project (Check all that apply):

Ownership of 10% or more of the voting shares of the business entity.

_____ Ownership of Twenty Five Thousand and 00/100 Dollars (\$25,000.00) or more of the fair market value of the business entity.

____ Funds received from the business entity exceed ten percent (10%) of my income for the previous year.

Real property is involved, and I have an equitable or legal ownership with a fair market value of at least Twenty Five Thousand and 00/100 Dollars (\$25,000.00).

_____ A relative of mine has substantial interest in the business entity or property that would be affected by my business decision of the public body of which I am a member.

Other: _____

None of the Above.

Upon filing this affidavit with the City of Frisco, Texas, I further affirm that no relative of mine, in the first degree by consanguinity or affinity, as defined in Chapter 573 of the Texas Government Code, is a member of a public body which took action on the agreement.

Signed this _____ day of _____, 2010.

Signature of Official / Title

BEFORE ME, the undersigned authority, this day personally appeared _____ and on oath stated that the facts hereinabove stated are true to the best of his / her knowledge or belief.

Sworn to and subscribed before me on this _____ day of _____, 2010.

Notary Public in and for the State of Texas
My commission expires:

EXHIBIT "G"
CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

CONFLICT OF INTEREST QUESTIONNAIRE For vendor or other person doing business with local governmental entity		FORM CIQ
<p>This questionnaire is being filed in accordance with chapter 176 of the Local Government Code by a person doing business with the governmental entity.</p> <p>By law this questionnaire must be filed with the records administrator of the local government not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.</p> <p>A person commits an offense if the person violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.</p>	<div style="border: 1px solid black; text-align: center; font-weight: bold; padding: 2px;">OFFICE USE ONLY</div> <div style="border: 1px solid black; height: 150px; margin-top: 5px;"> <div style="position: absolute; top: 5px; left: 5px; font-size: small;">Date Received</div> </div>	
<div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;"> 1 Name of person doing business with local governmental entity. </div>		
<div style="border: 1px solid black; padding: 5px;"> 2 <div style="margin-top: 10px;"> <input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire. </div> <div style="font-size: x-small; margin-top: 10px;"> (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than September 1 of the year for which an activity described in Section 176.006(a), Local Government Code, is pending and not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.) </div> </div>		
<div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;"> 3 Describe each affiliation or business relationship with an employee or contractor of the local governmental entity who makes recommendations to a local government officer of the local governmental entity with respect to expenditure of money. </div>		
<div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;"> 4 Describe each affiliation or business relationship with a person who is a local government officer and who appoints or employs a local government officer of the local governmental entity that is the subject of this questionnaire. </div>		

Amended 01/13/2008

EXHIBIT "G"
CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

<p style="text-align: center;">CONFLICT OF INTEREST QUESTIONNAIRE</p> <p style="text-align: center;">For vendor or other person doing business with local governmental entity</p>	<p>FORM CIQ</p> <p>Page 2</p>
<p>5 Name of local government officer with whom filer has affiliation or business relationship. (Complete this section only if the answer to A, B, or C is YES.)</p> <p>This section, item 5 including subparts A, B, C & D, must be completed for each officer with whom the filer has affiliation or business relationship. Attach additional pages to this Form CIQ as necessary.</p> <p>A. Is the local government officer named in this section receiving or likely to receive taxable income from the filer of the questionnaire?</p> <p style="text-align: center;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>B. Is the filer of the questionnaire receiving or likely to receive taxable income from or at the direction of the local government officer named in this section AND the taxable income is not from the local governmental entity?</p> <p style="text-align: center;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>C. Is the filer of this questionnaire affiliated with a corporation or other business entity that the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?</p> <p style="text-align: center;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>D. Describe each affiliation or business relationship.</p>	
<p>6 Describe any other affiliation or business relationship that might cause a conflict of interest.</p>	
<p>7</p> <div style="display: flex; justify-content: space-between; margin-top: 100px;"><div style="width: 45%; text-align: center;"><hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/><p>Signature of person doing business with the governmental entity</p></div><div style="width: 45%; text-align: center;"><hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/><p>Date</p></div></div>	

Amended 01/13/2009